

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MBELE LOURI LUCAS BEDOS,

Petitioner,

v.

A. NEIL CLARK,

Respondent.

CASE NO. C07-1968-MJP-JPD

REPORT AND RECOMMENDATION

I. INTRODUCTION AND SUMMARY CONCLUSION

Petitioner Mbele Louri Lucas Bedos, proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, requesting that the Court order respondent to assist him in obtaining a travel document to Gabon so that he can voluntarily depart the United States. (Dkt. 8). Respondent has filed a Return and Motion to Dismiss, arguing that petitioner's request is unripe because the Board of Immigration Appeals has not yet issued its decision and, therefore, his order of removal is not yet final. (Dkt. 12).

Having carefully reviewed the entire record, I recommend that petitioner's habeas petition (Dkt. 8) be DENIED and respondent's motion to dismiss (Dkt. 12) be GRANTED.

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II. BACKGROUND AND PROCEDURAL HISTORY

Petitioner is a native and citizen of Gabon, who entered the United States on January 25, 2004, as a nonimmigrant visitor for pleasure, with authorization to remain in the country until July 24, 2004. (Dkt. 15 at L9). On July 14, 2007, petitioner was apprehended by U.S. Customs and Border Protection agents after being discovered working aboard a fishing vessel near Juneau, Alaska. (Dkt. 15 at L16, R9). Petitioner was transferred to ICE custody and served with a Notice to Appear, charging him with removal from the United States for remaining in the country for a longer period of time than permitted, in violation of Section 237 of the Immigration and Nationality Act (“INA”). (Dkt. 15 at L8-9). ICE advised petitioner of his administrative rights and set bond in the amount of \$5,000. (Dkt. 15 at L1-2). Petitioner filed a motion for bond redetermination by an Immigration Judge (“IJ”). (Dkt. 15 at L12-14).

On October 2, 2007, an IJ heard petitioner’s request for bond redetermination, and ordered that petitioner’s bond remain at \$5,000. (Dkt. 15 at L19). Petitioner waived appeal of the IJ’s bond decision. *Id.* Petitioner has not posted bond and therefore remains in custody.

On October 23, 2007, the IJ denied petitioner’s application for asylum, withholding of removal, and protection under the Convention Against Torture, but granted him voluntary departure in lieu of removal by November 23, 2007, upon the posting of a voluntary departure bond in the amount of \$5,000. (Dkt. 15 at L67). The order also contained an alternate order of removal to Gabon in the event that petitioner did not voluntarily depart as required. *Id.* The order indicates that petitioner waived appeal of the IJ’s decision. *Id.* Nevertheless, on November 13, 2007, petitioner appealed the IJ’s decision to the Board of Immigration Appeals (“BIA”). (Dkt. 15 at L83, L79). Petitioner’s appeal remains pending with the BIA.

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III. DISCUSSION

A writ of habeas corpus shall not extend to a prisoner unless “[h]e is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241; *see also Singh v. Ashcroft*, 351 F.3d 435, 439 (9th Cir. 2003) (“The scope of habeas jurisdiction under 28 U.S.C. § 2241 is limited to claims that allege constitutional or statutory error in the removal process.”). Section 2243 provides, in part, as follows:

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless, it appears from the application that the application or person detained is not entitled thereto.

28 U.S.C. § 2243. A federal district court may dismiss a habeas petition if it appears from the face of the petition that the petitioner is not entitled to relief. *See, e.g., Lonchar v. Thomas*, 517 U.S. 314, 320 (1996) (citing Habeas Corpus Rule 4).

Here, petitioner is not challenging his detention pending removal as unconstitutional or in violation of any federal law. Rather, petitioner brings this action seeking to compel the government to assist him in obtaining travel documents from the Consulate of Gabon so that he can voluntarily depart the United States. (Dkts. 8, 16, 17, and 18). As petitioner fails to state a cognizable claim for relief under § 2241, the Court lacks jurisdiction to review this action.

Even if the Court were to find that jurisdiction exists, petitioner still fails to demonstrate any basis for relief. At the conclusion of removal proceedings, an Immigration Judge may permit an alien to voluntarily depart the United States in lieu of removal, if the Immigration Judge finds that:

(A) the alien has been physically present in the United States for a period of at least one year immediately preceding the date the notice to appear was served . . .

1 (B) the alien is, and has been, a person of good moral character for at least 5
2 years immediately preceding alien's application for voluntary departure;

3 (C) the alien is not deportable [for an aggravated felony or certain security
4 related grounds]; and

5 (D) the alien has established by clear and convincing evidence that the alien has
6 the means to depart the United States and intends to do so.

7 INA § 240B(b)(1), 8 U.S.C. § 1229c(b)(1). In addition, the voluntary departure regulations
8 specifically require an alien to post a voluntary departure bond of at least \$500. *See* INA §
9 240B(b)(3), 8 U.S.C. 1229c(b)(3); 8 C.F.R. § 1240.26(c)(3). "The voluntary departure bond
10 shall be posted with the district director within 5 business days of the immigration judge's order
11 granting voluntary departure . . ." 8 C.F.R. § 1240.26(c)(3).

12 Here, the IJ granted petitioner voluntary departure at the conclusion of removal
13 proceedings upon the posting of a \$5,000 bond. However, petitioner did not post bond and
14 remains detained. Although petitioner timely appealed the IJ's decision to the BIA, the statutory
15 requirement that a voluntary departure bond be posted within 5 days is not tolled by the filing of
16 an appeal with the BIA. *See In re AM-*, 23 I & N Dec.737, 745, FN 8 (BIA 2005) (stating that
17 the timely filing of an appeal with the BIA tolls the voluntary departure period, but not the
18 statutory bond requirement). Accordingly, it is unclear whether petitioner can still have the
19 benefit of his voluntary departure order.

20 Petitioner complains that the District Director has not assisted him in obtaining travel
21 documents for his voluntary departure to Gabon. However, the District Director has no duty to
22 secure travel documents for an alien's voluntary departure. Moreover, it appears that the real
23 impediment to petitioner's voluntary departure is his continued detention. Even if respondent
24 assisted petitioner in obtaining a travel document, petitioner would be unable to voluntarily
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1 depart because he has not paid the voluntary departure bond and remains detained. Conversely,
2 if petitioner pays the voluntary departure bond, he would be able to obtain his travel document
3 from the Consulate of Gabon himself. As petitioner fails to state a cognizable claim for relief
4 under § 2241, his habeas petition must be dismissed.

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6 IV. CONCLUSION

7 For the foregoing reasons, I recommend that respondent's motion to dismiss be granted,
8 and that this action be dismissed. A proposed Order accompanies this Report and
9 Recommendation.

10 DATED this 21st day of April, 2008.

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12 JAMES P. DONOHUE
13 United States Magistrate Judge
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